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No. 158

In the Supreme Court of the United States

OCTOBER TERM, 1945

THE PEOPLE OF THE STATE OF NEW YORK EX REL. DONALD A. J. RAY, PETITIONER

v.

WALTER B. MARTIN, AS WARDEN OF ATTICA STATE PRISON, ATTICA, NEW YORK

ON WRIT OF CERTIORARI TO THE COUNTY COURT OF WYOMING COUNTY, STATE OF NEW YORK

BRIEF FOR THE UNITED STATES, AMICUS CURIAE

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OPINIONS BELOW

The opinion of the county court (R. 20–33) is reported in 181 Misc. 925. The opinion of the appellate division of the supreme court (R. 36–39) is reported in 268 App. Div. 218. The opinion of the court of appeals (R. 43–53) may be found in the advance sheets for 294 N. Y. at page 61. Prior to the institution of this proceeding in the state courts, petitioner had filed an application for writ of habeas corpus in the federal district court. The opinion of the United States District

Court for the Western District of New York (R. 7–12) is reported in 54 F. Supp. 218 *sub nom. Ex parte Ray,* while the opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 12–13) is reported in 141 F. 2d 300 *sub nom. United States* v. *Martin.*

JURISDICTION

The judgment of the county court sought to be reviewed was entered on March 8, 1945, in accordance with the order of remittitur filed in the court of appeals on March 2, 1945 (R. 55–57). Mr. Justice Jackson issued an order allowing appeal on May 16, 1945 (R. 60–61). The record was filed in this Court on June 23, 1945 (R. 64). On October 8, 1945, the appeal was dismissed for want of jurisdiction but, treating the appeal papers as a petition for writ of certiorari as required by Section 237 (b) of the Judicial Code as amended (28 U. S. C. sec. 344 (c)), certiorari was granted and the Solicitor General was invited to file a brief *amicus curiae* if so advised (R. 63).

QUESTION PRESENTED

Whether the courts of the State of New York have jurisdiction to try one white man for the murder of another when the crime was committed within the limits of an Indian reservation.

STATUTES AND TREATIES INVOLVED

Pertinent portions of the statutes and treaties involved are set out in the Appendix, *infra.*

STATEMENT

In 1939 in the Supreme Court of New York for Cattaraugus County, petitioner, a white man, was convicted and sentenced to life imprisonment for the murder of another white man in the City of Salamanca, New York, within the limits of the Allegany Indian Reservation of the Seneca Nation of Indians (R. 4–5, 15).[1] The conviction was affirmed by the Appellate Division of the Supreme Court, and leave to appeal to the Court of Appeals was denied. The jurisdiction of the Supreme Court to try petitioner was not challenged during the trial or on appeal. (R. 6.) The City of Salamanca had been established pursuant to the Act of February 19, 1875, 18 Stat. 330 (Appendix, *infra*), which, among other things, provided that boundaries should be located for the Village of Salamanca and certain other villages so as to include all lands within the Allegany Reservation occupied by white settlers, that Indian lands within the villages as surveyed could be leased for twelve-year periods, and that certain existing leases were ratified (secs. 1–4). The Act further provided (sec. 5) that the leases should be recorded in the same manner as leases of lands outside the reservation and that leases should pass by assignment, descent, etc., as provided by New York law, but that the Indians' interest therein

[1] The historical background of this reservation is outlined in *The New York Indians*, 5 Wall. 761. See also R. 16–19.

should descend according to the laws of the Seneca Nation. Section 7 provided that both the appropriate state court and federal court should have jurisdiction of actions to recover rents or possession of real property within the villages. Section 8 provided:

> That all laws of the State of New York now in force concerning the laying out, altering, discontinuing, and repairing highways and bridges shall be in force within said villages, and may, with the consent of said Seneca Nation in council, extend to, and be in force beyond, said villages in said reservations, or in either of them; and all municipal laws and regulations of said State may extend over and be in force within said villages: *Provided, nevertheless,* That nothing in this section shall be construed to authorize the taxation of any Indian, or the property of any Indian not a citizen of the United States.

By the Act of September 30, 1890, c. 1132, 26 Stat. 558, the maximum term for renewal of leases was extended from 12 to 99 years. Many 99-year leases were executed, and at the present time Salamanca has a population of about 9,000, with only six or eight Indian families residing within the city (R. 19–20).

In 1943, petitioner filed an application for writ of habeas corpus in the United States District Court for the Western District of New York, alleging that the courts of the State of New York

were without jurisdiction of the offense for which he had been convicted, when committed within an Indian reservation (R. 6). The application was denied on the grounds that relief should first be sought in the state courts, and that in any event the state courts had jurisdiction because Congress had never vested exclusive jurisdiction over such a case in the federal courts (R. 7–12). The court concluded that there was no conflict with the decision of the United States Circuit Court of Appeals for the Second Circuit in *United States* v. *Forness*, 125 F. 2d 928, certiorari denied 316 U. S. 694, in which it had been held that Section 8 of the Act of February 19, 1875 (Appendix, *infra*) did not extend the general laws of the State of New York over the City of Salamanca (R. 11). The order denying the application was affirmed by the circuit court of appeals on the ground that the application to a federal court was prematurely made; Judge Clark was of the opinion that the second ground relied upon by the district court was also good (R. 12–13).

In February 1944, petitioner applied for a writ of habeas corpus in the state courts, alleging that he was being confined under the commitment of a court which had no jurisdiction in the premises (R. 4–6). A judge of the Supreme Court for Erie County issued the writ (R. 3), but after hearing in the County Court of Wyoming County, the writ was ordered dismissed (R. 33–34), the

court holding that the Act of February 19, 1875, permitted the extension of the penal laws of New York to crimes committed by non-Indians within the City of Salamanca, and further, that the city was not Indian country within the meaning of Section 2145 of the Revised Statutes, 25 U. S. C. sec. 217 (Appendix, *infra*) (R. 20–33). The Appellate Division affirmed the order of the county court on the grounds that the City of Salamanca was not Indian country within the meaning of Section 2145 of the Revised Statutes, and that the section had no application to a crime committed in Indian country by one white person against another (R. 35–39). The Court of Appeals affirmed the order of the Appellate Division for the reason that there was no basis in the Constitution or any treaty or statute for an assertion by the Federal Government of exclusive jurisdiction over crimes committed by one non-Indian against another on the Allegany Reservation, and because the Act of February 19, 1875 (Appendix *infra*) made the general laws of New York applicable to the City of Salamanca (R. 43–55).

SUMMARY OF ARGUMENT

A

Neither the Treaty of November 11, 1794, 7 Stat. 44 (Appendix, *infra*) nor any of the Indian Intercourse Acts had the effect of depriving a state of jurisdiction of crimes by one white man

against another when committed within an Indian reservation. Even if construed as establishing federal jurisdiction over cases not involving Indians, such federal jurisdiction would not be exclusive and state laws would continue to be enforcible so far as compatible with federal laws and treaties. The City of Salamanca, occupied by whites under leases from the Seneca Indians, is "Indian country." Nevertheless, Section 2145 of the Revised Statutes, which provides for the extension to the Indian country of the federal laws applicable to crimes committed in places under the sole and exclusive jurisdiction of the United States, does not deprive the State of New York of jurisdiction of the murder of one white man by another in the City of Salamanca. Although the United States has broad jurisdiction over the Indians, their lands and their affairs, all authority over Indian lands not necessary to the proper exercise of federal jurisdiction is reserved to the state within which the land lies. Since the exercise by the state of jurisdiction of offenses by whites against whites does not interfere in any way with the federal-Indian relationship, petitioner, a white man, was properly tried by the state courts for the murder of another white man.

B

The court below erred in holding as an alternative ground for decision that criminal juris-

diction over the City of Salamanca was granted to the State of New York by the Act of February 19, 1875, which provided that "all municipal laws and regulations" of New York may be extended over the city. It is clear that the Act permitted only laws pertaining to the organization and government of municipalities to be so extended.

ARGUMENT

THE COURTS OF THE STATE OF NEW YORK HAVE JURISDICTION TO TRY ONE WHITE MAN FOR THE MURDER OF ANOTHER EVEN THOUGH THE CRIME WAS COMMITTED WITHIN THE LIMITS OF AN INDIAN RESERVATION

The narrow question presented by this case is whether the State of New York has jurisdiction of crimes, more specifically the crime of murder, committed by one white man against another in a city situated within the boundaries of an Indian reservation in that state. Petitioner has contended that the state courts are without jurisdiction because the federal courts have exclusive jurisdiction over all crimes committed on the reservation in question. The courts below have upheld, on varying grounds, the jurisdiction of the state courts to try petitioner for the crime of which he was accused. See Statement, *supra*. Although agreeing that the result reached is correct, the United States takes the position that the state's jurisdiction stemmed in no way from the

Act of February 19, 1875 (Appendix, *infra*) upon which the trial court and Court of Appeals relied as one of the grounds for their decisions, and that such Act is wholly immaterial to the issue involved. The United States also disagrees with the holdings of the county court and Appellate Division that the City of Salamanca was not "Indian country".

A. *Without regard to the Act of February 19, 1875, the jurisdiction of the state courts is clear.*—In contending that the state courts were without jurisdiction of crimes committed on the Indian reservation within the geographical limits of the state, petitioner (Br. 6–15) apparently places his chief reliance upon Article VII of the Treaty of November 11, 1794, 7 Stat. 44 (Appendix, *infra*) between the United States and the Six Nations including the Seneca Nation. He asserts (Br. 13) that by this article "jurisdiction of the misconduct of individuals which would, of necessity include non-Indian offenders, was exclusively vested in the Federal Government." However, as petitioner himself acknowledges (Br. 11), the purpose of the treaty was to establish peaceful relations between the whites and the Indians, and a mere reading of the article will plainly show that it was intended to cover only offenses by an Indian against a non-Indian and by a non-Indian against an Indian, and not offenses by one white man against

another or even one Indian against another.[2] The obvious purpose of the article was to revise that part of the unratified Treaty of January 9, 1789, 7 Stat. 33 (Appendix, *infra*) providing that various offenses by a white man against an Indian and vice versa were to be punished in the New York courts if committed in that state. By its terms Article VII of the 1794 treaty was merely a temporary arrangement, but it was complemented, as intended, by the Indian Intercourse Act of May 19, 1796, 1 Stat. 469 (Appendix, *infra*) which established procedures for the punishment of various crimes committed on Indian lands by whites against Indians and by Indians against whites, but significantly omitted all references to crimes by one white person against another.[3] Therefore, it is plain that neither the

[2] This distinction in the race of the persons involved in crimes committed in the Indian country is the keystone in the determination of federal jurisdiction of such crimes. See Cohen, Handbook of Federal Indian Law (1942), pp. 358–365. Until the enactment of Section 9 of the Act of March 3, 1885, 23 Stat. 362, 385 (Appendix, *infra*), in the absence of specific treaty provision, there was no federal jurisdiction over crimes committed in the Indian country by one Indian against another, so that only the tribe could punish the offender. *Ex parte Crow Dog*, 109 U. S. 556. Likewise, as will be shown, in the absence of specific treaty or statutory provision to the contrary, the states have exclusive jurisdiction of crimes in the Indian country in which only white persons are involved.

[3] The pertinent provisions of the Act of May 19, 1796, were carried over substantially unchanged into the Indian Intercourse Acts of March 3, 1799, 1 Stat. 743, and March 30, 1802, 2 Stat. 139.

1794 treaty nor any statute enacted immediately thereafter conferred upon the federal courts any jurisdiction over crimes committed by one white man against another in Indian territory.

Petitioner also relies upon Section 2145 of the Revised Statutes, 25 U. S. C. sec. 217[4] (Appendix *infra*) as a basis for the alleged exclusive federal jurisdiction of crimes in Salamanca (Br. 17–20). This Section provides, with exceptions not here material, that the "general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country." In order for this provision to be of any assistance to petitioner it must first appear that the City of Salamanca is "Indian country" within the meaning of the Act, and then that the state courts were thereby deprived of jurisdiction of crimes committed by one white man against another in the Indian country. Both the county court and the Appellate Division held as one of the grounds for their decisions that the City of Salamanca was not Indian country within the

[4] This Section was derived from Section 25 of the Indian Intercourse Act of June 30, 1834, 4 Stat. 729. The latter was based upon Section 1 of the Act of March 3, 1817, 3 Stat. 383, which was, in turn, a revision of earlier Indian Intercourse Acts, all of which dealt with relations between Indians and non-Indians. See Cohen, Handbook of Federal Indian Law (1942), p. 364.

meaning of R. S. sec. 2145 (R. 33, 37–38). The Court of Appeals did not pass upon the issue, being of the opinion that petitioner's contention had some merit, but at the same time doubting whether the term "Indian country" could reasonably be applied to the City of Salamanca (R. 49–50). However, in this respect the United States agrees with petitioner. The City of Salamanca is located within the Allegany Reservation which belongs to the Seneca Nation. The term "Indian country" includes "any unceded lands owned or occupied by an Indian nation or tribe of Indians." *United States* v. *Chavez*, 290 U. S. 357, 364; *Ex Parte Crow Dog*, 109 U. S. 556, 561; cf. *Rice* v. *Olson*, 324 U. S. 786, 790–791. The fact the land in Salamanca is leased to white persons does not, as the Appellate Division thought (R. 37–38), change the result. *United States* v. *Soldana*, 246 U. S. 530.

But the denial of the state's jurisdiction of offenses by one white man against another is a different matter. This Court has held that, despite R. S. sec. 2145, newly admitted states have exclusive jurisdiction of offenses committed by white people against whites in the Indian country in the absence of some law or treaty to the contrary. *United States* v. *McBratney*, 104 U. S. 621; *Draper* v. *United States*, 164 U. S. 240. The theory of these cases was that upon a state's being admitted into the Union on an equality with the

other states, the federal government loses all control over offenses by one white against another on an Indian reservation within the territorial limits of the state.[5] *United States* v. *Ramsey*, 271 U. S. 467, 469; *Donnelly* v. *United States*, 228 U. S. 243, 271. Therefore, it is clear that the basis of the decision in the *McBratney* and *Draper* cases, *supra*, was the assumption that each of the original states had exclusive jurisdiction over crimes committed by whites against whites anywhere within its territorial limits, even on an Indian reservation.[6] We maintain that this assumption was correct.

Although undoubtedly the Constitution has given to the United States a broad jurisdiction over the Indians, their lands and their affairs (*Board of Comm'rs* v. *Seber*, 318 U. S. 705, 715; *United States* v. *Kagama*, 118 U. S. 375, 384–385),

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[5] Thus, R. S. sec. 2145 was applicable insofar as offenses by whites against whites were concerned only in the territories of the United States. Cf. *In Re Wilson*, 140 U. S. 575. The case of *Pickett* v. *United States*, 216 U. S. 456, 458, cited by petitioner as authority for his contention that R. S. sec. 2145 was applicable to his offense (Br. 28), involved a murder committed in Indian country prior to the admission of Oklahoma as a state, and not, as stated by petitioner, an offense committed after statehood. Hence, the *Pickett* case is not in petitioner's favor, but to the contrary serves to emphasize the fact that R. S. sec. 2145 has a narrower application in a state than in a territory.

[6] This assumption was also made in *United States* v. *Kagama*, 118 U. S. 375, 383, and *United States* v. *Rogers*, 4 How. 567, 572.

this does not mean that a state has no jurisdiction whatsoever over an Indian reservation within its borders. The states have jurisdiction over all lands within their borders except insofar as exclusive jurisdiction has been vested in the federal government. Here no such exclusive jurisdiction vested in the United States pursuant to Article I, section 8, clause 17,[7] of the Constitution, nor has there been any cession by the state and acceptance by the United States of exclusive jurisdiction. The authority of the federal government over the Allegany Reservation, at least in the absence of plain language, is not to be carried beyond the point necessary to carry out its obligations to its Indian wards. Whether or not crimes committed by white men against white men on an indian reservation might become a matter of federal concern, as long as there has been no such assertion of the federal power, the jurisdiction of a state embraces an Indian reservation just as any other lands in the state. ***Surplus Trading Co.*** v. ***Cook,*** 281 U. S. 647, 651; ***Mason Co.*** v. ***Tax***

[7] Clause 17 provides that Congress shall have power:

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings;

Com'n, 302 U. S. 186, 210; *Thomas* v. *Gay,* 169 U. S. 264, 274. For example, the mere fact that property of a non-Indian is situated on an Indian reservation does not prevent a state from subjecting it to taxation. *Wagoner* v. *Evans,* 170 U. S. 588; *Thomas* v. *Gay,* 169 U. S. 264; *Utah & Northern Railway* v. *Fisher,* 116 U. S. 28. So, too, in *New York* v. *Dibble,* 21 How. 366, it was held that New York had such sovereignty of the person and property of Indians within the state that it could punish white people for intruding upon the Indian lands, there being no conflict with any treaty or Act of Congress.* With all the more reason, therefore, would the state have jurisdiction to punish when the crime is committed by one white against another. "The power of a State to make such regulations to preserve the peace of the community is absolute, and has never been surrendered." *New York* v. *Dibble,* 21 How. 366, 370. It follows, therefore, that since neither the 1794 treaty nor any other provision of federal law vests exclusive jurisdiction to punish crimes committed by whites against whites on Indian reservations, the State of New York has juris-

* The *Dibble* case perhaps indicates a concurrent federal and state jurisdiction of some offenses committed by a white against an Indian, since it has been held that the federal courts would have jurisdiction of crimes coming within the purview of R. S. sec. 2145 committed by a white against an Indian in Indian country. *Donnelly* v. *United States,* 228 U. S. 243, 271–272.

diction to inflict punishment for the murder of one white man by another in the City of Salamanca.[9]

The conclusion reached is not contrary to the decision in *Worcester* v. *Georgia*, 6 Pet. 515, which held that in the circumstances of that case the state could not extend its laws over Indian lands. There the State of Georgia attempted to make illegal the activity of white men which was being carried on with the consent of the federal government and the Indians pursuant to treaty and statutory provisions, and the state was, therefore, interfering with the federal-Indian relationship. Cf. *New York* v. *Dibble*, 21 How. 366. But in the instant case there is no such interference; neither the person nor the

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[9] Since it is clear that the United States does not have exclusive jurisdiction of Indian reservations within a state, it is plain that the provisions of 18 U. S. C. secs. 451 and 452 (providing for the punishment of murders committed in places under the exclusive jurisdiction of the United States) are of no moment here (see petitioner's brief, p. 18). As was said in *In re Wilson*, 140 U. S. 575, 578, "The words 'sole and exclusive', in section 2145, do not apply to the jurisdiction extended over the Indian Country, but are only used in the description of the laws which are extended to it." It is also obvious that 25 U. S. C. sec. 231 (permitting extension of state health and education laws to Indian reservations) and pending bills (providing for extension of state criminal laws to all individuals on a reservation) are not in any sense evidence that a state had no criminal jurisdiction whatsoever on an Indian reservation (see petitioner's Brief, p. 21). The statute and bills merely provide for the extension of laws previously applicable only to whites to Indians as well.

property of the Indians has been violated and there is no basis for the exercise of federal jurisdiction. It is, therefore, the position of the United States, as stated by the United States Attorney upon petitioner's application for writ of habeas corpus to the federal district court (R. 11), that this crime committed by a white man against another white man was cognizable in the state, not the federal, courts. On this ground alone, we think the decision of the court below was correct.

B. *The Act of February 19, 1875, does not extend the general laws of the State of New York to the lands in question.*—By the Act of February 19, 1875 (Appendix, *infra*) Congress validated leases already made by the Senecas to the whites, approved a system for future leases, and made provision for surveying and establishing boundaries for the villages which had sprung up within the Indian reservations. Section 8 of the Act provided in part that "all municipal laws and regulations" of New York might extend over and be in force within the villages. The court below interpreted Section 8 as making applicable in the City of Salamanca all the general laws of New York, holding that "all municipal laws and regulations" meant all the internal, domestic laws of the state (R. 51–55). See also the opinion of the county court (R. 24–33). This interpretation by the state court is in direct con-

flict with that by the United States Circuit Court of Appeals in *United States* v. *Forness*, 125 F. 2d 928, 932 (C. C. A. 2), where it was held that only the laws relating to the organization and government of municipalities were permitted to be extended to the City of Salamanca by the 1875 Act. While the court below refused to follow the interpretation given to the 1875 Act in the *Forness* case, it approved the result reached therein on the ground that Indian wards were involved (R. 51–52). See also the opinion of the county court (R. 25, 27, 32). Thus, the court below has, in effect, interpreted Section 8 as extending the general laws of the state to the City of Salamanca except insofar as Indians are concerned.[10] However, inasmuch as Section 8 contains a clause specifically exempting Indians and their property from state taxation, it does not seem that under the familiar doctrine of *Expressio unius est exclusio alterius* the exemption of Indians from other laws of the state could thus be implied, if in fact Section 8 envisioned the general laws rather than only laws relating to municipalities. In our view, Congress in Section 8 had in mind only laws relating to municipalities.

[10] As a matter of practice, major crimes involving Indians committed in the city have apparently been considered as falling under the jurisdiction of the federal courts (R. 11, 18–19, 24–25).

By the 1875 Act Congress gave its assent to the establishment of white villages within the Seneca reservations. Prior to this time the Seneca Nation, with the approval of the United States, had placed its tribal government and internal affairs under some measure of control by the State of New York. *United States ex rel.* v. *Tyler,* 269 U. S. 13, 16; *Rice* v. *Maybee,* 2 F. Supp. 669, 671 (W. D. N. Y.). See Cohen, Handbook of Federal Indian Law (1942), pp. 421, 422–423. Moreover, the state already had complete jurisdiction of the white inhabitants of the reservation in their personal relations with each other. (See the discussion *supra.*) Under these circumstances it would indeed have been highly undesirable for the federal government to attempt to supervise the whites in their governmental relationships. It was only natural, therefore, that Congress should make some provision for the inhabitants to organize and maintain local governments under the existing framework of the law of the state which already had jurisdiction over their personal affairs. This is all that was necessary to place the village governments on a sound legal basis independent of federal control, and this is all that Congress did when it said in Section 8 that "all municipal laws and regulations" of New York might be in force within the villages. To give any greater scope to the phrase would be to remove the villages and any Indian property or

inhabitants therein from all federal control. Realizing that this could not be the effect of the statute, the court below reached the illogical conclusion that, while by virtue of the 1875 Act the general laws of New York were extended to the City of Salamanca, yet those laws, to some undefined extent, did not apply to the Indians. But the statute makes no such distinction between Indians and whites except as to taxation. It was the purpose of the statute to define precisely the limits of application of state law and not, as does the conclusion of the court below, create a field of uncertainty as to whether state or federal law applied.

In using the phrase "municipal laws and regulations" in Section 8 it is plain that Congress did not mean the "municipal (or domestic) law" of a state as opposed to its "international (or extra-mural) law" because a state under our Constitution has no "international" law. See *United States* v. *Forness*, 125 F. 2d 928, 932. So to interpret the phrase, as the court below has done (R. 51–55; see also R. 25–32), is to read the word "municipal" out of the statute. Nor does violence to the statute end here. Acceptance of such a version also deletes the carefully phrased provisions of the same Section relating to state highway laws [11] (see Appendix *infra*). The con-

[11] The court below (R. 55) explained the inclusion of the provision with respect to the state highway laws by pointing out that the Seneca Nation was to have the right to extend

struction given to the Act by the court below likewise renders meaningless most of the provisions of Sections 5 and 7 of the Act. If, by Section 8, all the laws of New York State were extended over the City of Salamanca, there was no necessity for providing that leases of lands within the villages should be recorded "in the same manner and with the like effect" (sec. 5) as similar instruments relating to other lands in the county. The provision that leases should pass by assignment "in the manner provided by the laws of said state" (*ibid.*) also becomes surplusage. Again, the specific provision of Section 7 authorizing actions in the state courts for the recovery of rents or for the recovery of possession was needless duplication. There is no warrant for construing the one word "municipal" in Section 8 thus to nullify Sections 5 and 7 and the other provisions of Section 8. Obviously, therefore, Congress used "municipal" in its primary meaning in order to extend to the villages only New York laws regulating local government.[12]

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those laws to the entire reservation. But, if Congress intended that the general laws were to be extended to the villages, it surely would have said so and then inserted a proviso that the Nation could extend the highway laws to the whole reservation if it so desired.

[12] In reaching an opposite result the court below treated as the best evidence of the proper interpretation of the Act the fact that the New York legislature had in 1881 passed a statute that "all the general laws of the state are extended over and apply to the same" (R. 53). Of course, the interpretation placed on a federal statute by a state legislature is of little weight in interpreting the statute.

CONCLUSION

For the foregoing reasons the judgment below should be affirmed, but on the sole ground that, apart from the Act of February 19, 1875, the State of New York had exclusive jurisdiction of the crime of murder committed by one white man against another on an Indian reservation within the state.

Respectfully submitted.

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DECEMBER 1945.

APPENDIX

1. A separate article added to the Treaty of January 9, 1789, 7 Stat. 33, 34–35, between the United States and the Six Nations provides:

> Should a robbery or murder be committed by an Indian or Indians of the Six Nations, upon the citizens or subjects of the United States, or by the citizens or subjects of the United States, or any of them, upon any of the Indians of the said nations, the parties accused of the same shall be tried, and if found guilty, be punished according to the laws of the state, or of the territory of the United States, as the case may be, where the same was committed. * * * And the said nations engage to deliver the persons that may be accused, of their nations, of either of the before mentioned crimes, at the nearest post of the United States, if the crime was committed within the territory of the United States; or to the civil authority of the state, if it shall have happened within any of the United States.

2. Article VII of the Treaty of November 11, 1794, 7 Stat. 44, 46, provides:

> Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States and Six Nations agree, that for injuries done by individuals on either side, no private revenge or retaliation shall take place; but, instead thereof, complaint shall be made by the party injured, to the other:

> By the Six Nations or any of them, to the President of the United States, or the Superintendent by him appointed: and by the Superintendent, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the nation to which the offender belongs: and such prudent measures shall then be pursued as shall be necessary to preserve our peace and friendship unbroken; until the legislature (or great council) of the United States shall make other equitable provision for the purpose.

3. The pertinent criminal provisions of the Indian Intercourse Act of May 19, 1796, 1 Stat. 469, are as follows:

> SEC. 4. *And be it further enacted,* That if any such citizen or other person, shall go into any town, settlement or territory, belonging, or secured by treaty with the United States, to any nation or tribe of Indians, and shall there commit robbery, larceny, trespass or other crime, against the person or property of any friendly Indian or Indians, which would be punishable, if committed within the jurisdiction of any state, against a citizen of the United States; or, unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding twelve months; and shall also, when property is taken or destroyed, forfeit and pay to such Indian or Indians, to whom the property taken and destroyed belongs, a sum equal to twice the just value of the property so taken or destroyed: And if such offender shall be unable to pay a sum at least equal

to the said just value, whatever such payment shall fall short of the said just value, shall be paid out of the treasury of the United States: *Provided nevertheless,* That no such Indian shall be entitled to any payment out of the treasury of the United States, for any such property taken or destroyed, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence.

* * * * *

SEC. 6. *And be it further enacted,* That if any such citizen, or other person, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit murder, by killing any Indian or Indians, belonging to any nation or tribe of Indians in amity with the United States, such offender, on being thereof convicted, shall suffer death.

* * * * *

SEC. 14. *And be it further enacted,* That if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or across the said boundary line, into any state or territory inhabited by citizens of the United States, and there take, steal or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, or shall commit any murder, violence or outrage, upon any such citizen, or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose;

who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe, to which such Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding eighteen months, then it shall be the duty of such superintendent, or other person authorized, as aforesaid, to make return of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken, as shall be proper to obtain satisfaction for the injury: And, in the meantime, in respect to the property so taken, stolen, or destroyed, the United States guarantee to the party injured, an eventual indemnification: *Provided always,* that if such injured party, his representative, attorney, or agent, shall, in any way, violate any of the provisions of this act, by seeking, or attempting to obtain private satisfaction or revenge, by crossing over the line, on any of the Indian lands, he shall forfeit all claim upon the United States, for such indemnification: *And provided also,* that nothing herein contained shall prevent the legal apprehension or arresting, within the limits of any state or district, of any Indian having so offended: *And provided further,* that it shall be lawful for the President of the United States, to deduct such sum or sums, as shall be paid for the property taken, stolen or destroyed by any such Indian, out of the annual stipend, which the United States are bound to pay to the tribe, to which such Indian shall belong.

4. Section 2145 of the Revised Statutes, 25 U. S. C. sec. 217, provides:

> Except as to crimes the punishment of which is expressly provided for in this title, the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

5. The Act of February 19, 1875, 18 Stat. 330, provides:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all leases of land within the Cattaraugus and Allegany reservations in the State of New York, heretofore made by or with the authority of the Seneca Nation of New York Indians, to railroad-corporations, are hereby ratified and confirmed; and said Seneca Nation may, in accordance with their laws and form of government, lease lands within said reservations for railroad purposes.
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> SEC. 2. That the President of the United States shall appoint three commissioners, whose duty it shall be, as soon as may be, to survey, locate, and establish proper boundaries and limits of the villages of Vandalia, Carrolton, Great Valley, Salamanca, West Salamanca, and Red House, within said Allegany reservation, including therein, as far as practicable, all lands now occupied by white settlers and such other lands as, in their opinion, may be reasonably required for the purposes of such villages; and they shall cause a return of their doings in writing, together with maps of such surveys and locations duly certified

by them, to be filed in the office of the county clerk of the county of Cattaraugus, in said State, there to be recorded and preserved. The boundaries of said villages so surveyed, located, and established shall be the limits of said villages for all the purposes of this act.

SEC. 3. That all leases of land situate within the limits of said villages when established as hereinbefore provided, except those provided for in the second section of this act, in which Indians or said Seneca Nation, or persons claiming under them are lessors, shall be valid and binding upon the parties thereto, and upon said Seneca Nation for a period of five years from and after the passage of this act, except such as by their terms may expire at an earlier date; and at the end of said period, or at the expiration of such leases as terminate within that time, said nation through its councillors shall be entitled to the possession of the said lands, and shall have the power to lease the same: *Provided, however,* That at the expiration of said period, or the termination of said leases, as hereinbefore provided, said leases shall be renewable for periods not exceeding twelve years, and the persons who may be at such time the owner or owners of improvements erected upon such lands, shall be entitled to such renewed leases, and to continue in possession of such lands, on such conditions as may be agreed upon by him or them and such councillors; and in case they cannot agree upon the conditions of such leases, or the amount of annual rents to be paid, then the said councillors shall appoint one person, and the other party or parties shall choose one person, as referees to fix and determine the terms of said lease and

the amount of annual rent to be paid; and if the two so appointed and chosen cannot agree, they shall choose a third person to act with them, the award of whom, or the major part of whom, shall be final and binding upon the parties; and the person or persons owning said improvements shall be entitled to a lease of said land and to occupy and improve the same according to the terms of said award, he or they paying rent and otherwise complying with the said lease or said award; and whenever any lease shall expire after its renewal as aforesaid, it may, at the option of the lessee, his heirs or assigns, be renewed in the manner hereinbefore provided.

SEC. 4. That said Seneca Nation is hereby authorized, by resolution of its councillors, duly elected according to the laws and system of government of said nation, or in such other manner as said nation in council may determine, to lease lands within said villages to which, by the laws or customs of said nation, no individual Indian or Indians, or other person claiming under him or them, has or is entitled to the rightful possession.

SEC. 5. That it shall be the further duty of the said commissioners to cause all lands within such village now leased, as hereinbefore mentioned, to be surveyed and defined as near as may be, and to cause the same to be designated upon the maps of such villages hereinbefore mentioned and provided for. All leases of lands within said villages, whether now existing or hereafter to be made under the provisions of this act, shall be recorded in the office of the clerk of said county of Cattaraugus in the same manner and with like effect as similar instruments relating to lands lying

in said county outside of said reservations are recorded by the laws of said State of New York. All leases herein mentioned or provided for shall pass by assignment in writing, will, descent, or otherwise in the manner provided by the laws of said State: *Provided, however,* That the rights of Indians in such leases shall descend as provided by the laws of said Seneca Nation.

SEC. 6. That all moneys arising from rents under the provisions of this act which shall belong to said Seneca Nation shall be paid to and recoverable by the treasurer of said Seneca Nation, and expended in the same manner and for the same purposes as are other revenues or moneys belonging to said Seneca Nation.

SEC. 7. That the courts of the State of New York within and for the county of Cattaraugus, having jurisdiction in real actions, and the circuit and district courts of the United States in and for the northern district of said State, shall have jurisdiction of all actions for the recovery of rents and for the recovery of possession of any real property within the limits of said villages, whether actions of debt, ejectment, or other forms of action, according to the practice in said courts; and actions of forcible entry and detainer, or of unlawful detainer arising in said villages, may be maintained in any of the courts of said county which have jurisdiction of such actions.

SEC. 8. That all laws of the State of New York now in force concerning the laying out, altering, discontinuing, and repairing highways and bridges shall be in force within said villages, and may, with the consent of said Seneca Nation in council, extend to, and be in force beyond, said vil-

lages in said reservations, or in either of them; and all municipal laws and regulations of said State may extend over and be in force within said villages: *Provided, nevertheless,* That nothing in this section shall be construed to authorize the taxation of any Indian, or the property of any Indian not a citizen of the United States.

6. Section 9 of the Act of March 3, 1885, 23 Stat. 385, as amended, 18 U. S. C. sec. 548, provides:

> All Indians committing against the person or property of another Indian or other person any of the following crimes, namely, murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, and larceny on and within any Indian reservation under the jurisdiction of the United States Government, including rights-of-way running through the reservation, shall be subject to the same laws, tried in the same courts, and in the same manner, and be subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States: *Provided,* That any Indian who commits the crime of rape upon any female Indian within the limits of any Indian reservation shall be imprisoned at the discretion of the court: *Provided further,* That as herein used the offense rape shall be defined in accordance with the laws of the State in which the offense was committed. * * *

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SUPREME COURT OF THE UNITED STATES.

No. 158.—October Term, 1945.

The People of the State of New York *ex rel.* Donald A. J. Ray, Appellant, *vs.* Walter B. Martin, as Warden of Attica State Prison, Attica, New York.	On Writ of Certiorari to the County Court of Wyoming County, New York.

[January 7, 1946.]

Mr. Justice Black delivered the opinion of the Court.

In *United States* v. *McBratney*, 104 U. S. 621, this Court held that the State courts of Colorado, not the Federal courts, had jurisdiction to prosecute a murder of one non-Indian by another committed on an Indian reservation located within that State. The holding in that case was that the Act of Congress admitting Colorado into the union overruled all prior inconsistent statutes and treaties and placed it "on an equal footing with the original States . . . "; that this meant that Colorado had "criminal jurisdiction over its own citizens and other white persons throughout the whole of the territory within its limits, including the Ute Reservation"; and that consequently, the United States no longer had "sole and exclusive jurisdiction" over the Reservation, except to the extent necessary to carry out such treaty provisions which remained in force. That case has since been followed by this Court[1] and its holding has not been modified by any act of Congress. The question this case presents is whether New York, which is one of the original States, has jurisdiction to punish a murder of one non-Indian committed by another non-Indian upon the Alleghany Reservation of the Seneca Indians located within the State of New York.

In 1939, the petitioner was sentenced to life imprisonment in a New York State court for the murder of a man in the City of Salamanca, which is within the Alleghany Reservation but has only 8

[1] Draper v. United States, 164 U. S. 240. See also United States v. Ramsey, 271 U. S. 467, 469; Donnelly v. United States, 228 U. S. 243, 271; United States v. Kagama, 118 U. S. 375, 383.

Indian families living among its 9000 inhabitants. He later brought this habeas corpus proceeding in a county court of the State.[2] He alleged that since the Indian reservation was under the exclusive jurisdiction of the United States, the State courts lacked jurisdiction to try and convict him. The County Court of Wyoming County heard the case and ordered the writ dismissed. 181 Misc. 925. Both the Appellate Division of the Supreme Court, 268 App. Div. 218, and the Court of Appeals, 294 N. Y. 61, affirmed the dismissal.[3] We granted certiorari because of the federal questions raised.

We think the rule announced in the *McBratney* case controlling and that the New York Court therefore properly exercised its jurisdiction. For that case and others which followed it all held that in the absence of a limiting treaty obligation or Congressional enactment each state had a right to exercise jurisdiction over Indian reservations within its boundaries.[4] Petitioner claims that the *McBratney* case differs from this proceeding in several respects. First, he contends that Colorado could exercise greater powers over its Indian reservations than New York can by virtue of the enabling act which admitted Colorado into the union, a similar enactment being lacking here since New York is one of the original states. As we have seen, the Colorado enabling act was held in the *McBratney* case to put Colorado "on an equal footing with the Original States", and to repeal earlier legislation and treaties inconsistent with the enabling act. The fact that Colorado was put on an equal footing with the original states obviously did not give it any greater power than New York. And no greater

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2 A previous petition in the Federal courts had been denied because relief had not first been sought in the New York State courts. 54 F. Supp. 218; 141 F. 2d. 300.

3 The New York Court of Appeals held, and the State urges here that the State court had jurisdiction by virtue of Section 7 of the Act of Congress passed in 1875, 18 Stat. 330, authorizing certain parts of the Alleghany Reservation to be surveyed for establishment of a number of villages including Salamanca. Section 7 provided among other things that "all the municipal laws and regulations of said State [New York] may extend over and be enforced within said villages." Acting . . . under what it conceived to be the authority granted by this Section, New York passed a law, Chap. 188 of New York Laws of 1881, extending its "general law" so as to apply to Salamanca. Since we think the rule in the *McBratney* case controlling, we find it unnecessary in this case to pass on the scope and validity of this Act.

4 This holding was in harmony with general principles governing this subject. Surplus Trading Co. v. Cook, 281 U. S. 647, 651; Hallowell v. United States, 221 U. S. 317, 320; United States v. McGowan, 302 U. S. 535, 539.

power can be inferred from the repealing function of the enabling act, since, as we shall point out, the statutes and treaties which petitioner claims deprive New York of jurisdiction do not in fact do so.

This brings us to petitioner's further contention that certain Federal statutes specifically grant the United States exclusive jurisdiction over the Seneca Reservation. He points out that the laws of the United States make murder a crime "if committed in *any place* within the sole and exclusive jurisdiction of the United States . . ."; 18 U. S. C. 452; that Section 2145 of the Revised Statutes, 25 U. S. C. 217, makes this murder statute applicable to "Indian country"; and contends that the Seneca Reservation is Indian country, and that consequently New York has no jurisdiction to punish a murder committed on that Reservation. The cases following the *McBratney* case adequately answer petitioner's contentions concerning Section 2145, even if we assume, what we need not decide, that the Seneca Reservation is Indian country within the meaning of the statute. While Section 2145 of the Revised Statutes has been held applicable in territories to crimes between whites and whites which do not affect Indians,[5] the *McBratney* line of decisions stands for the proposition that States, by virtue of their statehood, have jurisdiction over such crimes notwithstanding Section 2145.[6] See also *New York* v. *Dibble*, 21 How. 366.

Petitioner further contends that the *McBratney* rule is not applicable here because exercise of state jurisdiction over non-Indians at Salamanca would violate the Treaty of 1794, 7 Stat. 586. We can find no language in that Treaty that lends itself to such interpretation. The Treaty was one of peace and friendship between the United States and the Indians. It provided against private revenge or retaliation on account of injuries done by individuals on either side. Such injuries were to be reported by each nation to the other with a view of having the nation to which the individual offender belonged take "such prudent measures . . . as shall be necessary to preserve . . . peace and friendship unbroken."

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[5] In re Wilson, 140 U. S. 575; Pickett v. United States, 216 U. S. 456, 458.

[6] In Donnelly v. United States, *supra*, 228 U. S. at p. 270, this Court pointed out that the provisions contained in Section 2145 of the Revised Statutes were first enacted as Section 25 of the Indian Intercourse Act of June 30, 1834, 4 Stat. 729, 733. This means that the statute was in effect at the time of the *McBratney* decision. Yet, significantly the Court did not even find it necessary to mention it.

This procedure was to be followed until Congress made "other equitable provision for the purpose." This latter language, upon which the petitioner most strongly relies as imposing a duty upon the United States to exercise jurisdiction over the whole Reservation to the exclusion of the State, even as to offenses committed by whites against whites, cannot properly be interpreted as the petitioner asks. The entire emphasis in treaties and Congressional enactments dealing with Indian affairs has always been focused upon the treatment of the Indians themselves and their property. Generally no emphasis has been placed on whether state or United States Courts should try white offenders for conduct which happened to take place upon an Indian reservation, but which did not directly affect the Indians. Neither the 1794 Treaty nor any other requires a holding that offenses by non-Indians against non-Indians disturbing the peace and order of Salamanca are beyond New York's power to punish.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.